

Bundesrepublik Deutschland
BUNDESMINISTERIUM FÜR POST UND TELEKOMMUNIKATION

Bundesministerium für Post und Telekommunikation · Postfach 80 01 · D-53105 Bonn

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
WASHINGTON, D.C. 20554

U.S.A.

95-22
RECEIVED

MAY 1 0 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Ihr Zeichen, Ihre Nachricht vom
Votre référence, Votre lettre du
Your reference. Your letter of

Mein Zeichen, meine Nachricht vom
Ma référence, ma lettre du
My reference, my letter of
112

+49 228
14 11 30

Bonn
08.05.95

DOCKET FILE COPY ORIGINAL

Market Entry and Regulation of Foreign Affiliated Entities
IB Docket No. 95-22
RM-8355
RM-8392


Dear Mr. Caton:

Please find enclosed one original and four (4) copies of the Reply Comments the German Ministry of Posts and Telecommunications wants to file on behalf of the German Federal Government in regard to the above-captioned proceeding.

Respectfully submitted

By direction of the Minister

Enclosures


Klaus-Dieter Scheurle

No. of Copies rec'd 024
List A B C D E

RECEIVED

MAY 10 1995

Before the

Federal Communications Commission
Washington DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of
Market Entry and Regulation
of Foreign-Affiliated Entities

IB Docket 1 95-22
RM-83 55
RM-8392

DOCKET FILE COPY ORIGINAL

Reply Comments of the German Government

It was a point of mutual understanding at the G7 meeting of Industry and Telecommunications Ministers that open markets and national treatment for foreign entities are essential requirements for the development of a global information society.

With respect to the opening of markets, the German Federal Government is fully complying with this principle by opening up to competition as of 1998 the provision of long-distance, local and international telecommunication services in addition to network infrastructure.

On March 27, 1995, the Ministry announced an ambitious plan for implementing full liberalization of the German telecommunications market. See Key Elements of a Future Regulatory Framework for the Telecommunications Sector, Federal Ministry of Posts and Telecommunications ("Key Elements"). The plan sets forth a tight schedule for the implementation of full liberalization. It targets the beginning of 1997 - one year before the EU liberalization date - as the date by which licenses shall be issued to competitors for network construction and operation. Thus, Deutsche Telecom's competitors can begin their commercial operations in the current monopoly markets immediately on January 1, 1998. Key Elements § XV.1. The schedule for the individual implementation steps is the following: draft legislation by June 1995; public comments and hearing by the summer of 1995; presentation of draft legislation by the fall of 1995; adoption of the new law by the summer of 1996; formulation of standard licenses, licensing procedures and associated ordinances by the fall of 1996. Id. § XV.2.

The Ministry's plan sets forth key principles as well as a basic framework for the future regulatory regime. Among other things, it calls for the creation of a new regulatory agency that is "independent and separate" but located "within the administrative scope of a Federal Ministry"; the licensing, without limitation as to number, of new entrants to the liberalized markets on conditions that are objective,

transparent, and nondiscriminatory; and special regulatory oversight of firms with substantial market power in order "to ensure fair and promote workable competition" (including the imposition of requirements relating to network interconnection, "open and efficient access" to telecommunications networks and services, internal cost accounting, and the setting of prices for services). Key Elements §§ III.2, IV.3, V.3, VIII.1. To ensure that unnecessary barriers to entry do not thwart new competitors, the plan permits the free use of public rights-of-way for the laying of new wires and other infrastructure. Id. § VII.

This plan is in full accord with the decisions of the Council of the European Union of July 22, 1993 and November 17, 1994.

With respect to the obligations arising out of the OECD Code of Liberalization of Capital Movements, Germany has agreed to full freedom in the telecommunications sector, thereby granting national treatment to all foreign investors. Germany's observance of this commitment is currently evidenced by the investment by foreign companies in German mobile communications operators, such as D2 and E-plus; and in private satellite network operators. Thus, in markets that are already open to competition there is no limitation whatsoever on foreign investment in German telecommunications companies.

After the complete opening of the market in 1998, foreign investors will be entitled to full national treatment in all telecommunications markets.

In light of these facts, the German Federal Government views with concern the FCC's proposals set forth in its proceeding concerning "Market Entry and Regulation of Investment by Foreign-Affiliated Entities."

As explained in the Notice of Proposed Rulemaking (NPRm), American telecommunications licenses will be subject to considerable regulatory intervention if foreign entities hold more than a 10% interest in the U.S. telecommunications companies at issue (Section 214). This intervention is specifically aimed at providing telecommunications services from the USA to points abroad. Potential foreign investors in American telecommunications companies will be exposed to considerable entrepreneurial risks as a result of these regulatory measures. It is thus likely that the planned authority for possible regulation and for imposing conditions upon German companies will inhibit investments in American common carriers. Nor can it be ruled out that American common carriers would refrain from accepting foreign investment or from entering into joint ventures with mutual capital investment out of a concern for restrictions on their licenses.

In light of the rapidly expanding globalization of telecommunications services and the resulting necessity for worldwide cooperation and sharing of business opportunities and risks, the German government regards the proposed regulation as posing a considerable threat to the continued development of free world trade.

Reference should also be made in this context to the longstanding market entry restrictions contained in Section 310 of the Federal Communications Act with respect to American carriers that operate broadcast facilities. In the past, the German Federal Government has also always stood for the elimination or liberalization of Section 310's restrictions. The necessity of this step is reflected by the fact that several American companies currently hold significant interests in German telecommunications companies, whereas the possibility for German telecommunications companies to hold interests in American telecommunications companies remains restricted. This imbalance would be rendered even greater by the Commission's proposed new restrictions on foreign involvement in the USA on the one hand, and the planned opening of the market in Germany with full maintenance of national treatment for foreign entities on the other hand.

The German government considers both the NPRM and Section 310 to be an obstacle on the road to development of the information society. Neither regulation is compatible with the agreement reached at the G7 meeting on February 24-25, 1995 in Brussels with respect to the basic principles for the realization of the information infrastructure. The decisions made there with respect to research and development; new applications; and entry into national markets are inseparably intertwined from both an economic and regulatory perspective.

Although market entry for domestic companies in the US telecommunications markets is in principle unrestricted, Vice President Gore proposed at the G7 meeting to condition national treatment for foreign entities upon the existence of market entry reciprocity and other competition conditions. The procedures and negotiations necessary for establishing these conditions could further restrict foreign companies' readiness to invest in the United States and impede competition in the American and international markets to the disadvantage of the consumer. The German government hopes that restrictive regulations for foreign companies and the need to conduct difficult and time-consuming reciprocity negotiations can be eliminated.

Finally, we wish to express our agreement with several of the concerns expressed in the Comments of the British and French governments. As the British have correctly noted, the FCC's proposed "effective market access" test is likely to operate "in a fashion counterproductive to" the Commission's stated goals. Comments of the British Government at 1. In addition, the Commission's proposed requirement that

foreign carriers who are affiliated with U.S. carriers file their accounting rates with all other countries is a highly intrusive and questionable assertion of the Commission's authority. Id. at 5-6. And finally, the opening of markets is a subject that is more appropriately pursued "in multilateral fora such as the WTO, not through introducing reciprocity arrangements in telecommunications regulatory regimes." Id. at 6; see also id. at 8 (same); Comments of the French Directorate General of Posts and Telecommunications, at 2 (urging that goal of open markets be pursued under the auspices of the WTO, but suggesting, contrary to the position of the German government, that the principle of bilateral reciprocity has merit). For these and other reasons, the German government urges the Commission to decide not to adopt the "effective market access" test.